IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11847 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAGHAVA MAHESHBHAI JAYSHANKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11847 of 2004

MR KB PUJARA for Petitioner No. 1

Mr. Dipen A. Desai, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 06/10/2004

ORAL JUDGEMENT

Rule. Shri Dipen A. Desai, learned AGP waives service of Rule on behalf of the respondents. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the

Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the action of the respondents in denying admission to the petitioner in PTC Course in 2004-2005. It is the case of the petitioner that the petitioner is a physically handicapped disabled person suffering from visual impairment. He has secured 73.83% of marks in Standard 12 General Stream and is entitled to admission on the seats reserved for Physically Handicapped persons to the extent of 3% as statutorily provided. It is the case of the petitioner that pursuant to the advertisement dated 4.6.2004 issued by the respondent No.2 in the local newspaper inviting applications for PTC Course for the year 2004-2005, the petitioner applied for the same in the Physically Handicapped category as according to him he was eligible for getting admission on the reserved category of Physically Handicapped. Admissions to PTC course are governed by Gujarat Educational Institution Regulation Act, 1984 and the rules made thereunder. It is the case of the petitioner that though the petitioner appeared before the Disablement Verification Committee and though the said Committee was satisfied that the petitioner was suffering from visual impairment the petitioner was not given admission and hence the present Special Civil Application has been filed.

3. Shri KB Pujara, learned advocate appearing for the petitioner has submitted that along with the application the petitioner had submitted a certificate issued by the Medical Officer, General Hospital and Medical College, Bhavnagar certifying that the visual disablement of the petitioner is 20% and by communication dated 17.7.2004 the petitioner was directed to appear before the Committee on 25.7.2004 and accordingly the petitioner appeared before the said Committee and he was duly examined by the Doctors and they were satisfied that the petitioner was suffering from visual impairment and thereupon the respondent No.2 issued letter dated 25.7.2004 on the spot to the petitioner certifying that the Disablement Committee had verified the petitioner and found the petitioner to be physically disabled and that therefore the petitioner's disability was considered acceptable for the purpose of admission to the PTC course and accordingly the petitioner was directed to remain present for admission on 2.8.2004 with new medical certificate of disability obtained from the Civil Hospital of the concerned district, i.e. Bhavnagar. Accordingly the petitioner obtained the certificate dated 27.7.2004 from the Doctors of General Hospital and Medical College, Bhavnagar and though the petitioner had produced the certificate of disability on 2.8.2004 one

Dr. C.S. Chauhan, Deputy Director of Primary Education told the petitioner that the petitioner had disability of 20% whereas 40% disability was necessary for admission and therefore the petitioner should bring another certificate and accordingly the petitioner approached the doctors of Sir 'T' General Hospital, Bhavnagar and obtained new certificate of disability showing 40% disability which was produced and inspite of that the petitioner was not given admission in the PTC course. It is submitted by Shri Pujara, learned advocate that as per the rules and instructions issued for the purpose of admission in PTC course the opinion of the committee, i.e. Disablement Verification Committee would be final and though the Disablement Verification Committee has found the petitioner as a handicapped suffering from a visual impairment and though in the communication dated 25.7.2004 it is so stated that the Disablement Verification Committee has verified the certificates and after examining the petitioner is satisfied with regard to the visual impairment of the petitioner and inspite of the aforesaid fact the petitioner is not given admission in PTC course.

4. In response to the notice issued by this Court, Shri Dipen A. Desai, learned AGP appears on behalf of respondents. It is submitted that by communication dated 25th July 2004 the petitioner was directed to produce a fresh Disability Certificate issued by the Civil Hospital of the concerned district signed by 3 doctors and the petitioner was directed to remain present on 2.8.2004. The petitioner remained present with the certificate of the Civil Hospital, Bhavnagar dated 27.7.2004 on 2.8.2004 which was signed by only 2 doctors and therefore the petitioner was directed to produce disability certificate signed by 3 doctors. As at the relevant time the petitioner did not produce the certificate signed by 3 doctors the petitioner was not given admission and in the meantime the admissions were already granted and there is no seat now vacant on which the petitioner can be given admission in PTC course. It is also further submitted that when the petitioner had produced the certificate signed by 3 doctors dated 9.8.2004 surprisingly the disability of the petitioner is shown as 40% whereas in earlier certificate signed by the very doctors the disability is certified to be of 20% and therefore it is submitted that considering the aforesaid fact the petitioner cannot be given admission in PTC course and therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf

of the parties. Admissions in PTC course are governed by the regulations and the instructions. In the rules for admission to PTC course there is nothing to show that so far as visual impairment is concerned it should be 40%. It is also stated in the said rules as well as the instructions more particularly Instruction No.4 that opinion and decision of the Disablement Verification Committee would be final and that the certificate of the Civil Surgeon of the concerned district is required to be produced for the purpose of showing the disability. Considering the aforesaid rules and the instructions for admission in PTC course the case of the petitioner is required to be considered. It is an admitted position that the petitioner had filled-in the form for getting admission in PTC course on the reserved category of Physically Handicapped. Along with the said application the petitioner had produced the certificate issued by the Civil Surgeon, Bhavnagar, certifying that the visual impairment of the petitioner is 20%. By communication dated 17.7.2004 the petitioner was directed to appear before the Disablement Verification Committee on 25.7.2004. The petitioner did appear before the Disablement Verification Committee and was duly examined by the doctors, and it appears from the record that the Verification Committee was satisfied with regard to the visual impairment of the petitioner. Even in the communication dated 25th July 2004 it is so stated that after examining the petitioner as well as the certificates the Disablement Committee has found the petitioner a handicapped and that Committee has considered the said disablement of the petitioner for the purpose of granting admission in PTC course. In that view of the matter, considering Instruction No.4 as well as Rules for admission in PTC course when the opinion and finding of the Disablement Committee is final, there was no reason for the respondent not to grant admission to the petitioner in the reserved category of Handicapped. There is no requirement that 40% disability for visual impairment is required. The only requirement is examination by the Disablement Committee with regard to impairment. In that view of the matter, the action of the respondents in not granting admission to the petitioner in PTC course cannot be said to be legal and justified. The reasoning given by the respondents in not granting admission to the petitioner in the PTC course in the reserved category of Handicapped to the effect that the petitioner did not produce a fresh disability certificate on 2.8.2004 signed by 3 doctors and the certificate which was produced by the petitioner on 2.8.2004 was signed by only 2 persons is most arbitrary. If the certificate issued by the Civil Surgeon is signed

by 2 doctors, the petitioner cannot be penalized. The petitioner cannot insist and compel the authority to give the certificate signed by 3 members. Even the insistence on the part of the respondents to produce a fresh Disability Certificate even after verification and examination by the Disablement Verification Committee is also unwarranted. However, in view of the fact that the petitioner was found to be eligible for getting admission in PTC course in the reserved category of Handicapped by the Disablement Verification Committee, the petitioner was required to be granted admission in PTC course in the reserved category of Handicapped and, therefore, the action of the respondents, in not granting admission to the petitioner in PTC course in the reserved category of Handicapped requires to be quashed and set aside.

6. The next question which is required to be considered by this Court is that what relief can be granted to the petitioner for admission in PTC course for the year 2004-2005. The respondents have now come out with the case that for the year 2004-2005 all the seats are filled-in and there is no seat on which admission can be given to the petitioner in the PTC course in the reserved category of Handicapped. As held earlier, the action of the respondent in not giving admission to the petitioner in PTC course in the reserved category of Handicapped is absolutely illegal and the same is quashed and set aside. Merely because the seats are filled-in, the petitioner cannot be made to suffer for the illegality committed by the respondents in not granting admission to the petitioner more particularly in view of the fact that the petitioner is a Handicapped and suffering from visual impairment. It is also true that admissions in the PTC course are required to be granted considering the intake capacity. At the same time the petitioner also cannot be made to suffer more particularly when the petitioner is found to be Physically Handicapped.

7. Under the circumstances, by allowing the present Special Civil Application, it is directed that the petitioner be granted admission in the PTC course for the Academic Year 2005-2006 and that the petitioner will not have to compete with other persons on merits while granting admission in PTC course in the year 2005-2006.

8. For the reasons stated above, the present Special Civil Application is allowed. The action of the respondent, in not granting admission to the petitioner in PTC course in the reserved category of Physically Handicapped, is hereby quashed and set aside. The

respondents are directed to give admission to the petitioner in PTC course for the academic year 2005-2006 in the reserved category of Physically Handicapped. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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